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# The Observer

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## MESSAGE FROM THE CEO



This reporting season seems to show that the waning external environment may not be as bad as originally feared.

We welcome moves by some of Corporate Malaysia's biggest names, who are addressing the uncertainty and volatility of external markets by choosing to return excess cash to shareholders. While in the past, some companies with strong and stable free cashflow (and minimal gearing) might have decided to keep the cash, these financially-sound companies are increasingly choosing to return money to shareholders. Provided that this decision is made with an eye to future cash needs, we generally welcome this move.

Of late, we have seen such developments among telco shares such as TM, Maxis and Axiata (with Axiata in fact even slightly raising its payout ratio), and among consumer and gaming counters. As we have always said, investors will always turn to fundamentally strong counters with a bias towards income growth and a generous dividend policy.

Overseas, while Apple is also considering what to do with its USD \$97.6 billion in cash - responding to investors' criticism that its balance sheet is too big - there is another welcome development: that it will adopt a policy that says a majority (rather than only a plurality) of shareholders is needed to elect directors. The resolution calls for board members to be elected by more than 50 percent of shareholders voting, where previously, a director could be voted in simply by getting more yes votes than those opposed - even if most shareholders hadn't voted in the person's favor. As we have seen, requiring a majority vote gives shareholders more influence over board composition; this move is a major nod in favour of global corporate governance efforts, providing yet more impetus for similar changes locally.

We also would like to highlight Bank Negara Malaysia (BNM) Governor Tan Sri Zeti Akhtar Aziz's recent comments on the need for more consolidation among insurance companies. We have seen the benefits of size among Malaysian banks following BNM's intervention (when it imposed the 2 billion ringgit capital requirement in response to the Asian financial crisis), and clearly such heft and resilience is important in volatile and uncertain times. Moreover, BNM's rules and responsible lending guidelines, having been recently formulated in response to rising levels of household debt, will also lend much-needed shape and discipline to the financial sector.

Best regards...

*Rita Benoy Bushon*

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## MSWG's Quick Take on Ongoing Corporate Transactions

### **YTL Corporation Berhad (YTL)/ YTL Cement Berhad (YTL CMT):**

YTL Cement Berhad (YTL CMT) shares were suspended on 29 February 2012, following the announcement made on 21 February 2012 that more than 90% of the listed shares of YTL CMT were held by the Offeror as of that date. Meanwhile, the final closing date for the Offer has been extended to 9 March 2012, from 24 February 2012 (second closing date for the offer) and 10 February 2012 (first closing date for the Offer). The Offeror is required to hold 94.78% of YTL CMT's listed shares to trigger a compulsory acquisition under Section 222 of CMA.

*Comment by MSWG: As 9 March 2012 is the final closing date, there will be no further extension to the date. The move of extending the closing date after the offeror has secured more than 90% of total shares could indicate that the offeror intends to invoke Section 222 of Capital Markets and Services Act to compulsorily acquire all remaining shares not owned by the offeror. MSWG has previously highlighted to the regulator that daily updates of shareholdings via announcements should be made when the Offeror has passed the threshold of having acquired 90% of the listed shares. Such updates are beneficial to minority shareholders who have yet to surrender their shares due to the looming threat of compulsory acquisition under Section 222 of CMA. This has not been made mandatory but MSWG hopes that such good practice could be carried out to provide a level playing field between the offeror and minority shareholders. This would help to avoid scenarios such as the one that occurred during the acquisition of IOI Properties Bhd by IOI Corp in 2009, where the IOI Properties' shareholders ended up with unquoted shares as there were no frequent updates on the acceptance level to facilitate them in making an informed decision to keep or sell.*

**Integrax Berhad (INTEGRA):** It was reported that recently appointed deputy Chairman, Amin Halim Rasip, commented that the shareholder disagreement should be resolved after a reshuffling of director appointments and the resignation of Che Khalid from Tenaga Nasional Berhad (TENAGA), which is a major shareholder and a major client of INTEGRA. However, INTEGRA's board clarified that the views made by Amin Halim Rasip were made in his personal capacity and did not reflect those of the board or company, and that INTEGRA has been receiving support and was actively engaged with TENAGA.

*Comment by MSWG: It is undeniably important that the public, and shareholders in particular, need to be very clear as to who in fact is the official spokesperson of the PLC. It does not auger well for the company if wrong messages or subsequent rebuttals are communicated to the public.*

**Kumpulan Hartanah Selangor Berhad (KHSB):** State government linked KHSB has removed two joint company secretaries following a controversy over the loss of 234ha leasehold land believed to be worth RM250 million. The land was forfeited by the Land Office in August 2011 due to illegal quarry activities, and shareholders were kept in the dark over the forfeiture.

*Comment by MSWG: The forfeiture has a significant impact on the company's earnings and balance sheet. Although the company secretary is required to make timely disclosure of material information, was the Board not fully aware that illegal quarry activities were being carried out on the*

*land and that forfeiture of the land needed to be announced to Bursa Malaysia? The issues of risk management, transparency and governance warrant serious attention. Shareholders have the right to answers on all these pertinent issues.*

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## On MSWG's Watchlist

**Silver Bird Group Berhad (SILVER):** On 24 February 2012, the Company announced that it was not able to issue its annual audited financial statement (AAFS) by 29 February 2012 due to the need for more time to resolve audit queries raised by the Auditors on 22 February 2012. Subsequently, on 27 February 2012, the Company's shares were suspended from trading upon request by the Company in view of a pending announcement in relation to the earlier delay in issuance of the AAFS for the financial year ended 31 October 2011.

The follow-up announcement on 29 February 2012 confirmed that the Company was an affected listed issuer pursuant to PN1 and PN17. Three key executives, the Group MD, the executive director and the general manager were suspended due to alleged financial irregularities. Based on the issues highlighted by the Company's auditors, the maximum exposure faced by the Group arising from the alleged irregularities may amount to approximately RM111.5 million. Thus, PKF Advisory Sdn Bhd, an international accounting and business advisory firm, was appointed as the forensic accountants to conduct a special audit for the Company.

**Teo Seng Capital (TEOSENK):** Emerging Glory Sdn Bhd, which has privatised Leong Hup Holdings Berhad (LHH), was not successful in applying to the Securities Commission seeking a waiver, and was therefore required to make a mandatory downstream acquisition offer of TEOSENK as new leaders would be introduced into TEOSENK and there would be changes to the shareholdings in TEOSENK by the parties acting in concert after the privatisation of LHH. The offer price of RM0.65 per TEOSENK share is above the minimum obligatory offer price of RM0.55 per TEOSENK share computed according to Practice Note 21 of Malaysian Code on Take-Overs and Mergers. The independent adviser has recommended that shareholders reject the offer, since it is deemed unfair and unreasonable in regards to average price earnings ratio, EV/EBITDA as compared to other comparable companies, dividend yield, and premiums, given against other unconditional take-over offers of which the offerors' intention is to maintain listing status of the target company.

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## Local News and Developments

[Bursa Malaysia publicly reprimands Namfatt and fines seven directors a total of RM250,000](http://announcements.bursamalaysia.com/EDMS%5Cedmsweb.nsf/LsvAllByID/602368D073F44933482579B10022FB09?OpenDocument)

<http://announcements.bursamalaysia.com/EDMS%5Cedmsweb.nsf/LsvAllByID/602368D073F44933482579B10022FB09?OpenDocument>

[Bursa Malaysia reprimand, fines and suspends Lee Chong Fatt for Unlawful Conduct](http://www.bursamalaysia.com/website/bm/media_centre/listing.jsp?mode=date&sel=2012&a=%2Fbm%2Fmedia_centre%2Fmedia_releases%2Fyears%2F2012%2F20120223_160014750.html#top)

[http://www.bursamalaysia.com/website/bm/media\\_centre/listing.jsp?mode=date&sel=2012&a=%2Fbm%2Fmedia\\_centre%2Fmedia\\_releases%2Fyears%2F2012%2F20120223\\_160014750.html#top](http://www.bursamalaysia.com/website/bm/media_centre/listing.jsp?mode=date&sel=2012&a=%2Fbm%2Fmedia_centre%2Fmedia_releases%2Fyears%2F2012%2F20120223_160014750.html#top)

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## Global News and Developments

[Apple's Cook Signals New Era in Heeding Investors' Concerns](http://www.businessweek.com/news/2012-02-27/apple-s-cook-signals-new-era-in-heeding-investors-concerns.html)

<http://www.businessweek.com/news/2012-02-27/apple-s-cook-signals-new-era-in-heeding-investors-concerns.html>

### [Corporate Governance - 20 years old and time for a re-think](http://www.mindfulmoney.co.uk/10500/investing-strategy/corporate-governance--20-years-old-and-time-for-a-re-think.html)

<http://www.mindfulmoney.co.uk/10500/investing-strategy/corporate-governance--20-years-old-and-time-for-a-re-think.html>

### [Bumi founder Nat Rothschild survives board ousting](http://www.telegraph.co.uk/finance/newsbysector/industry/mining/9094240/Bumi-founder-Nat-Rothschild-survives-board-ousting.html)

<http://www.telegraph.co.uk/finance/newsbysector/industry/mining/9094240/Bumi-founder-Nat-Rothschild-survives-board-ousting.html>

### [Improving corporate governance: Reduce familiarity quotient on boards, evaluate the performance of CEOs](http://articles.economictimes.indiatimes.com/2012-02-27/news/31104208_1_corporate-governance-companies-bill-board)

[http://articles.economictimes.indiatimes.com/2012-02-27/news/31104208\\_1\\_corporate-governance-companies-bill-board](http://articles.economictimes.indiatimes.com/2012-02-27/news/31104208_1_corporate-governance-companies-bill-board)

### [Olympus board resigns, taps chairman from bank, president from medical section](http://www.washingtonpost.com/business/industries/olympus-board-resigns-taps-chairman-from-bank-president-from-medical-section/2012/02/27/gIQAZvPKdR_story.html)

[http://www.washingtonpost.com/business/industries/olympus-board-resigns-taps-chairman-from-bank-president-from-medical-section/2012/02/27/gIQAZvPKdR\\_story.html](http://www.washingtonpost.com/business/industries/olympus-board-resigns-taps-chairman-from-bank-president-from-medical-section/2012/02/27/gIQAZvPKdR_story.html)

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